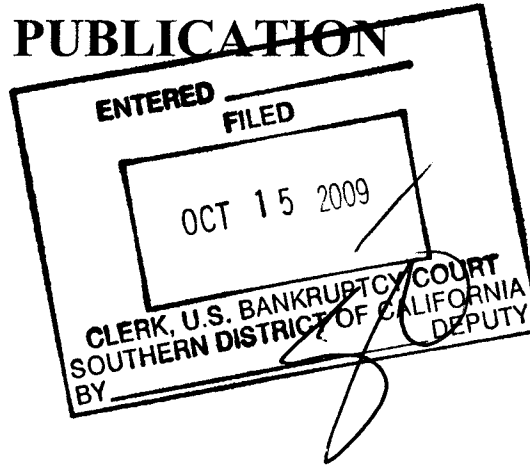


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# NOT FOR PUBLICATION



UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

In re

UC LOFTS ON 4<sup>TH</sup>, LLC, and  
UC LOFTS ON 5<sup>TH</sup>, LLC,

Debtors

Bankruptcy No. 05-15409-JM7

MEMORANDUM DECISION SUSTAINING  
OBJECTIONS TO CLAIM 6

After further review of the documents submitted by the parties, and reflection on the oral argument presented by counsel at a hearing on September 2, 2009, the Court will grant James Warner's motion for summary judgment on the objections to Claim 6.

Amended Claim 6 was filed by Mark and Susan Whillock on December 16, 2008 ("Claim 6"). Claim 6 asserts a secured claim of \$883,369.86, plus post petition interest. The basis of the claim is "collateral for loan to third party", and the attachments seek an unsecured claim based on "two promissory notes issued by the Debtor". The notes attached to Claim 6 were for loans in the amount of \$250,000 and \$600,000. Both notes were signed by Charles McHaffie, as manager for the Borrower, Urban Coast, LLC. There is no indication in the notes that either of the UC Lofts entities were responsible for the debt arising from the promissory notes.

1 Charles McHaffie offered real property owned by the Debtors as  
2 collateral for the notes, and executed trust deeds in favor of the  
3 Whillocks to encumber the real property. The original trust deeds  
4 were signed by Charles McHaffie for Urban Coast, LLC. Amended trust  
5 deeds were executed and recorded later, to correctly identify the  
6 owner of the property as granting the security interest. These  
7 amended deeds were executed on behalf of "UC Lofts on 4<sup>th</sup>, LLC and UC  
8 Lofts on 5<sup>th</sup>, LLC, By: Urban Coast, LLC, By: Charles McHaffie, its  
9 sole manager." No modifications were made to the promissory notes.  
10 The real property that was the collateral is no longer property of the  
11 estate, as a senior secured lender obtained relief from the automatic  
12 stay and foreclosed its interest in the property.

13 After the preliminary hearing on the objections to claims, the  
14 Court issued an Order Requesting Further Motions and Briefing  
15 ("Order"). The Order admonished Mark and Susan Whillock to allege  
16 some basis for liability of these Debtors for the obligation  
17 represented by the promissory notes or Claim 6 would be disallowed.  
18 In response, the Whillocks asserted that the notes were attributable  
19 to the Debtors because they were supported by consideration or benefit  
20 to the Debtors by allowing Mr. McHaffie to finish other projects and  
21 redirect his investment to the UC Lofts project. The Whillocks  
22 contend that the notes should be reformed to correct a mistake and  
23 include the Debtors as obligors for the debt because that was the  
24 intent of the parties. They further rely on the doctrine of  
25 promissory estoppel to enforce the notes against the Debtors.

26 A promise which the promissor should reasonably expect to  
27 induce action or forbearance on the part of the promisee  
28 or a third person and which does induce such action or  
forbearance is binding if injustice can be avoided only by  
enforcement of the promise.

1 Restatement 2d Contracts, § 90(1).

2       However, the promise involved must be clear and unambiguous to  
3 be binding under the doctrine. Lange v. TIG Insurance Co., 68  
4 Cal.App.4th, 1179, 1185, 81 Cal.Rptr.2d 39. (1998).

5       The suggestion that the parties intended the Debtors to be liable  
6 for the underlying obligation is refuted by the deposition testimony  
7 of Mark Whillock and Scott Tallman found in transcripts that were  
8 filed in connection with the Whillock claims. Mr. Whillock knew he  
9 was not loaning the money represented by the promissory notes to UC  
10 Lofts, nor was he expecting payment from the Debtors in any form but  
11 the collateral. He understood that these Debtors "gave a guarantee  
12 on that money with a deed, a guarantee on the loan just using the  
13 property for a guarantee for the money that was borrowed." There is  
14 no indication he relied on the financial position of the Debtors for  
15 repayment. He knew the funds were not used on the UC Lofts project.

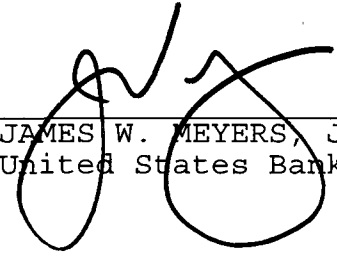
16       Mr. Whillock was expecting repayment from Charles McHaffie, not  
17 from the Debtors. The Whillocks allegations concerning the control  
18 Mr. McHaffie asserted over both the Debtors and Urban Coast, LLC,  
19 would be relevant to an attempt to pierce the corporate veil to hold  
20 Charles McHaffie or Urban Coast, LLC liable for the obligations of the  
21 Debtors, but provides no basis to transfer the liability on the notes  
22 from Mr. McHaffie and Urban Coast, LLC, to these Debtors. The only  
23 promise made on behalf of the Debtors was that real property owned by  
24 the Debtors would be pledged as collateral for repayments of the  
25 notes. That promise was fulfilled.

26       Any presumption of validity afforded to a proof of claim has been  
27 overcome in this case. The statements included in Claim 6 and the  
28 documents provided in opposition to the motion for summary judgment

1 do not establish personal liability of either Debtor for the amounts  
2 due on the promissory notes. This is not a case to avoid the trust  
3 deeds granted to the Whillocks as preferential or fraudulent  
4 transfers. The potential benefit of the loans to third parties may  
5 have supported an argument that there was sufficient consideration to  
6 permit the Debtors' property to be pledged as collateral. But that  
7 is not the issue before the Court. Any interest the Whillocks had in  
8 the Debtors' property was eliminated through foreclosure by a senior  
9 secured creditor.

10 The Whillocks have not provided any evidence that the parties  
11 intended these Debtors be personally obligated on the promissory  
12 notes. They have not established any genuine issue of material fact  
13 for trial, and the motion for summary judgment is granted. The Court  
14 will enter a separate order.

15 Dated: OCT 15 2009

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18 JAMES W. MEYERS, Judge  
19 United States Bankruptcy Court  
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